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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR 16-382 HSG
	)	
Plaintiff,	)	
	)	GOVERNMENT'S SENTENCING
v.	)	MEMORANDUM
	)	
JORGE GOMEZ,	)	
	)	Date: June 18, 2018
Defendant.	)	Time: 2:00 p.m.

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1 **I. INTRODUCTION**

2 Jorge GOMEZ built and maintained several marijuana grow houses for his co-defendant Oscar  
3 Escalante's drug trafficking organization. Though GOMEZ was not in charge of the organization, his  
4 own actions and his statements to Oscar and others during the existence of the conspiracy indicate that  
5 he had an important role and that he was invested in the conspiracy's success. Indeed, he recruited  
6 others into the organization, including three of his co-defendants in this case, and then reprimanded at  
7 least one of them when he failed to perform as expected. GOMEZ and the government agreed to a 60-  
8 month prison term, followed by 4 years of supervised release. Probation concurs. The government thus  
9 asks that the Court accept the parties' agreement and impose that sentence.

10  
11 **II. FACTS**

12 GOMEZ was the general contractor for co-defendant and ring-leader, Oscar Escalante. Oscar  
13 managed conspiracies to manufacture and distribute marijuana both in and outside of California, and to  
14 distribute heroin and methamphetamine. GOMEZ converted residences (and one business) into grow  
15 houses for Oscar. Pre-Sentence Report ("PSR") ¶ 23. The work he did was extensive: he bypassed the  
16 utility meter, installed a new electrical system in the house, installed irrigation and air conditioning and  
17 filtration systems, hung the high-intensity grow lights, and built walls and sealed gaps to ensure total  
18 control over light sources, prevent outsiders from seeing the plants inside the house, and prevent the  
19 strong odor of marijuana plants from escaping to the outside air. Id. ¶¶ 23-29.

20 After he constructed the grows, he maintained the equipment and provided advice to Oscar's  
21 workers on how to operate it. Id. ¶ 23. For example, in May 2016, Oscar and GOMEZ discussed  
22 whether the workers at one grow house were overwatering. He told Oscar that "there's a little puddle  
23 inside the room, I saw it last night. Whoever watering that shit's overwatering." GOMEZ added that  
24 "[t]hese guys don't listen." And in June 2016, GOMEZ had exchanged chats with the woman tending  
25 the grow at 2512 Bugle Way in Antioch in which they discussed whether her failure to follow his  
26 instructions had resulted in one of the grow rooms overheating and all the plants dying. PSR ¶ 23.

27 GOMEZ also maintained his own grow house in El Cerrito, until his landlord discovered it and  
28 evicted him and his girlfriend. Id. ¶ 31.

1 And GOMEZ recruited others to join Oscar's organization. Id. ¶ 32. He brought in co-  
2 defendants Brandon Lingo, Christopher Mir, and James Hinkle. Id. GOMEZ arranged for Mir to travel  
3 to California from North Carolina to work in the grow on Yacht Drive in Discovery Bay for a trial  
4 period in May 2016. Id. ¶ 30. He then coordinated Mir's return to join the organization and work in the  
5 grow house longer-term. Id. Though the people GOMEZ recruited worked for Oscar, GOMEZ retained  
6 some managerial responsibilities over them. Thus, when Lingo offered excuses for missing a meeting  
7 with other members of the conspiracy, GOMEZ gave him an extensive lecture on the importance of  
8 communication and taking accountability for his actions. Id. ¶ 32. GOMEZ may have delivered his  
9 lecture in street lingo, but it was a speech that any human resources professional in any company could  
10 have delivered to an employee who was failing to perform as expected.

11 The grand jury charged GOMEZ with one count of conspiring to manufacture, distribute and  
12 possess with intent to distribute 100 or more marijuana plants. On February 12, 2018, GOMEZ entered  
13 into a plea agreement in which he admitted that offense. Docket # 443. As part of his plea, GOMEZ  
14 admitted that he knew the conspiracy involved "well over 100 marijuana plants." Plea Agmt ¶ 2. He  
15 further admitted that the grow houses that he knew about produced a combined total of at least 2,247  
16 plants over time. Id. GOMEZ's plea was part of a group of mutually contingent plea agreements that he  
17 and six co-defendants (including Oscar Escalante) executed.

### 18 19 **III. DISCUSSION**

20 The Court must impose a sentence sufficient, but not greater than necessary, to reflect the  
21 seriousness of the offense, deter others from committing similar crimes, protect the public from the  
22 defendant, and rehabilitate the defendant. 18 U.S.C. § 3553(a)(2); United States v. Carty, 520 F.3d 984,  
23 991 (9th Cir. 2008). The statute sets forth several factors that the Court must consider in determining a  
24 just sentence: (1) the nature and circumstances of the offense and the defendant's history and  
25 characteristics; (2) the purposes of sentencing; (3) the kinds of sentences available; (4) the Guidelines  
26 range for sentences; (5) any pertinent policy statements; (6) the need to avoid unwarranted sentencing  
27 disparities and the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a); Carty,  
28 520 F.3d at 991. The Guidelines should be the starting point and the initial benchmark. Gall v. United

1 States, 552 U.S. 38, 49 (2007). Though the guidelines are not binding, they “reflect a rough  
2 approximation of sentences that might achieve section 3553(a)’s objectives.” Rita v. United States, 551  
3 U.S. 338, 350 (2007).

4 **A. GOMEZ’s Guidelines Range is 60 Months.**

5 The government calculates GOMEZ’s Guidelines range as follows:

6 Base Offense Level, § 2D1.1(c)(8)	24
7 Specific Offense Characteristic: 8 Maintaining a premises: § 2D1.1(b)(12)	+2
9 Acceptance of Responsibility, § 3E1.1	-3
10 Early Disposition, § 5K2.0(a)(2)(B)	-2
11 Total Offense Level	21
Criminal History Category (0 points)	I
12 Range	60

13 **1. The Base Offense Level is 24.**

14 The offense level in a drug case is determined by the aggregate weight of the drugs for which the  
15 defendant is responsible. U.S.S.G. § 2D1.1 applic. notes 5, 7. The parties agreed that GOMEZ is  
16 responsible for the equivalent of 224.7 kilograms of marijuana. Plea Agmt ¶ 2. The drug quantity is  
17 based on the number of plants produced at seven of the organization’s grow houses over the estimated  
18 production life of each grow house. The government attributes those seven grow houses to GOMEZ  
19 because pole camera video, intercepted communications, and evidence recovered from GOMEZ’s phone  
20 demonstrate his involvement with those houses. Probation agrees with this attribution. PSR ¶ 33. That  
21 quantity corresponds to a base offense level 24. U.S.S.G. § 2D1.1(c)(8) (100 kg to 400 kg).

22 **2. GOMEZ Maintained Drug-Involved Premises.**

23 The parties agreed to a two-level enhancement for maintaining a drug-involved premises because  
24 GOMEZ built and maintained the organization’s marijuana grows, and because he operated his own  
25 indoor grow for some period in an apartment he rented in El Cerrito. Plea Agmt ¶ 7. In determining  
26 whether this enhancement applies, the Court considers, among other things, the extent to which the  
27 defendant rented or owned the premises and the extent to which he controlled the access to or activities  
28 there. U.S.S.G. § 2D1.1 n.17. Here, GOMEZ maintained a marijuana grow at his own residence in El

Cerrito, PSR ¶ 31, and he appears to have had some ongoing supervision of the manner in which the organization's gardeners operated the grow equipment in each of the organization's grow houses, id. ¶ 23. Equally significant, he constructed and maintained the growing infrastructure at other locations the organization used. This was not simply a matter of clearing a spot on a coffee table for some greenery. He converted living spaces to manufacturing spaces: he stripped out carpeting, drapes, and anything else that might harbor mold; he installed new (and illegal) electrical and irrigation systems; he hung and connected the high-intensity lights needed to grow outdoor plants indoors; he installed air conditioning systems and fans to circulate the air and reduce the heat that the high-intensity lights generated; and he cut holes through walls, floors and ceilings to install the air filtration system needed to eliminate the powerful odor of marijuana plants before it was vented to the outside. And later, he revisited the grows to address any problems that arose with the equipment he had installed. Though GOMEZ did not own or rent most of the organization's grow houses, he nonetheless "maintained" the grow operations there.

### **3. Probation Concludes that GOMEZ Was an Organizer or Manager.**

Probation concludes that a two-level enhancement under § 3B1.1(c) applies because GOMEZ recruited at least three other persons to participate in the conspiracy (Lingo, Mir and Hinkle), and his statements to Lingo indicate that he exercise at least some supervisory authority over them. PSR ¶ 41. The government did not insist that GOMEZ admit a role enhancement because he agreed not to seek Safety Valve relief and, thus, the role enhancement had no impact on his Guidelines range.

### **4. GOMEZ Should Receive a Three-Level Deduction for Acceptance.**

GOMEZ indicated his intent to plead guilty before the government began preparing for trial against him. He should receive a three-level deduction for early acceptance of responsibility. U.S.S.G. § 3E1.1.

### **5. GOMEZ Receives a Two-Level Deduction as Part of a Global Resolution.**

The Guidelines provide for downward departures "in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that is nevertheless relevant to determining the appropriate sentence." U.S.S.G. § 5K2.0(a)(2)(B). Courts have applied § 5K2.0 and awarded downward departures where multiple defendants join in a group disposition. See,

1 e.g., United States v. Garcia, 926 F.2d 125, 128 (2d Cir. 1991) (affirming a 4-level downward departure  
2 for a defendant who “broke the log jam” and induced two other defendants to plead guilty); United  
3 States v. Mastronardo, 22 F. Supp. 3d 490, 497-98 (E.D. Pa. 2014) (2-level downward departure under  
4 § 5K2.0 for 11-defendant global plea); Matera v. United States, 2006 WL 3479067, at \*2 (E.D.N.Y.  
5 2006) (four-point deduction for participation in global plea agreement). See also U.S. v. Jesse Aguilar,  
6 N.D. Cal. Case No. CR 11-355 EJD Docket #800 (government agreed to 2-level downward variance for  
7 all defendants in group disposition).

8 GOMEZ participated in a group disposition involving seven defendants. As the government has  
9 explained before, this group resolution was not only saved significant resources for both the Court and  
10 the government, it also changed the dynamic for the remaining defendants and encouraged them to enter  
11 settlement negotiations. Moreover, the group of seven GOMEZ joined were among the first defendants  
12 to plead guilty. For these reasons, the government agreed to a two-level reduction in his offense level  
13 under U.S.S.G. § 5K2.0.

#### 14 **6. The Court Must Sentence GOMEZ to At Least 60 Months.**

15 The Superseding Indictment alleges, and GOMEZ admitted, involvement in a conspiracy to  
16 manufacture and distribute 100 or more marijuana plants. Plea Agmt ¶ 2. He is thus subject to a 5-year  
17 minimum prison term. 21 U.S.C. § 841(b)(1)(B). Under certain circumstances, the Court may impose a  
18 sentence less than the statutory minimum. 18 U.S.C. § 3553(f). GOMEZ expressly waived any  
19 opportunity that section might have afforded him however,<sup>1</sup> see Plea Agmt ¶ 2, and he affirmed that  
20 waiver during his plea colloquy. Accordingly, the Court must sentence him to at least 60 months.

#### 21 **B. The Government Recommends a 60-Month Prison Term for GOMEZ.**

22 The parties agreed that a reasonable sentence in this case is 60 months. Plea Agmt ¶ 8. The  
23 Court must decide whether to accept or reject the parties’ agreement. Fed. R. Crim. Proc. 11(c)(3)(A).  
24 The Court has broad discretion to accept or reject the plea agreement. United States v. Harris, 679 F.3d  
25 1179, 1182 (9th Cir. 2012). The Court should consider whether the negotiated sentence “is too lenient  
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27 <sup>1</sup> As explained above, because of GOMEZ’s decision and the Guidelines calculation applicable to  
28 him, the government was not required to litigate whether he had a role that would have disqualified him  
from Safety Valve relief in any case. Should this become an issue in the future, the government reserves  
the right to raise and litigate that issue.

1 or otherwise not in the public interest in light of the factual circumstances specific to the case.” Id. See  
2 also United States v. Miller, 722 F.2d 562, 565 (9th Cir. 1983) (categorical rules regarding acceptance or  
3 rejection of plea agreements are improper). For the reasons discussed below, the government believes  
4 that the negotiated sentence is appropriate and asks that the Court accept the agreement.

5 GOMEZ was the general contractor for an organization that manufactured and distributed  
6 significant quantities of marijuana in several states. And as his own statements indicate, he knew this  
7 was a criminal organization; there was no effort to even appear to comply with state law. He knew that  
8 his labor was in the service of a criminal organization, with all that meant: street justice, money  
9 laundering, destruction of property. Though GOMEZ does not appear to have carried or been involved  
10 with firearms or violence, his own statements indicate that he understood that he was enabling that type  
11 of conduct. PSR ¶ 32 (“[T]his isn’t like school, your mom, or your homies. This is a whole other world  
12 that you’re walking into . . . [M]aybe this isn’t the world you want to be in. My world is different. I  
13 already told you, bro, and I thought maybe you were ready, but this is different. . . . You seen the people.  
14 You were sitting at the table. Those some real n\*\*\*\*\*, bro.”).

15 Moreover, GOMEZ was the only person in his role. Though others carried out specific tasks at  
16 Oscar’s direction, GOMEZ appears to have been the only one who did the construction work necessary  
17 to create and maintain the marijuana grows. This kind of work can only be done by people whom the  
18 organization trusts because it requires the contractor to know about the illegal operation and where its  
19 grow houses are. That information is valuable to rival drug gangs, stick-up crews and law enforcement.  
20 GOMEZ thus occupied a significant role in the organization.

21 Moreover, GOMEZ need not have participated in this conspiracy. Though he has several arrests,  
22 PSR ¶¶ 55-57, he has no prior convictions. He has marketable skills and the ability to hold a job. Id.  
23 ¶¶ 73-75. His current and past employers said they would re-hire him (presumably) notwithstanding his  
24 felony conviction for drug trafficking.<sup>2</sup> And though his parents divorced when he was young, his home  
25 life was otherwise stable and he did not face the adversities that often mar the childhoods of defendants  
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27 <sup>2</sup> GOMEZ reported that his current employer was not aware of his conviction, PSR ¶ 73,  
28 and there is no reason why his prior employer would. The government assumes, that they know now  
however, since U.S. Probation contacted them to verify employment and ask them whether they would  
rehire GOMEZ.

1 in criminal cases: poverty, lack of education, addicted and/or violent parents, and trauma. Id. ¶¶ 60-61.  
2 Thus, he seems not to have had the same vulnerabilities as others whom Oscar manipulated.

3 GOMEZ's father suggests that it was GOMEZ's relationship with his girlfriend that led to his  
4 joining this criminal scheme. PSR ¶ 63. GOMEZ's girlfriend is a sister of co-defendants Melina  
5 Escalante (Oscar's wife), Alfredo Ortiz, and Ignacio Gonzalez. It is not clear from the PSR however,  
6 whether their relationship was the reason for his joining Oscar's organization, or an outgrowth of it.  
7 Indeed, GOMEZ reports a long history of drug use, PSR ¶¶ 68-70, and has had a few prior contacts with  
8 law enforcement, id. ¶¶ 55-57. Thus GOMEZ already may have been running in the same circles as  
9 Oscar and his associates at the time he began his relationship with Oscar's sister-in-law.<sup>3</sup> It is possible  
10 that GOMEZ found her through them, rather than the other way around, as GOMEZ's father suggests.

11 Whatever GOMEZ's reasons for joining Oscar's organization, GOMEZ was committed to it, as  
12 his statements to Lingo indicate. GOMEZ refers to a "whole other world" that he belongs to, and says  
13 that there is "so much other stuff going on" that "we don't got time to pay attention to what you got  
14 going on." PSR ¶ 32. Indeed, the whole point of GOMEZ's lecture was performance management: he  
15 had an employee who was not performing as expected and he was admonishing the employee about  
16 communication skills and personal accountability. Only someone invested in the business' success  
17 gives that lecture. GOMEZ told Probation that he worked for Oscar because Oscar provided him drugs  
18 and a way to earn extra money. PSR ¶ 36. That may be part of the story, but it is not the whole story.  
19 His admonitions to Lingo were sober and clear-headed, and there was not a bit of hesitation in his voice.  
20 They were not the statements of a captive. The statutory minimum thus is commensurate to GOMEZ's  
21 involvement and culpability and represents an appropriately severe sentence, especially for someone  
22 who has no prior prison or jail terms.

23 A 60-month sentence in this case is consistent with the sentences other defendants have received  
24 or will receive. GOMEZ is closest in culpability to Phillip Jiunti, Ignacio Gonzalez, and Oswaldo  
25 Escalante. Like GOMEZ, the other three defendants were charged only in the marijuana conspiracy:  
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27 <sup>3</sup> GOMEZ reports that he was a heavy drug user, but he also seems to have stopped using, without  
28 any treatment assistance, after he was arrested in this case. Probation notes that he had two (possibly  
three) positive drug tests while on pre-trial release. PSR ¶ 69. There were never any Form 8s filed, and  
the government was unaware of these violations until the publication of the PSR.



1 Jiunti and Gonzalez were gardeners who worked in the grows GOMEZ constructed, and Oswaldo  
2 operated his own portfolio of grow houses and employed his own workers. Like GOMEZ, neither Jiunti  
3 nor Oswaldo was charged with a firearm offense. Unlike GOMEZ, Jiunti was involve for just a short  
4 time – just a couple weeks. This suggests a lower sentence than GOMEZ. But Jiunti had an extensive  
5 criminal history and was on federal supervised release when he committed this offense – factors that  
6 suggest a longer sentence. The Court sentenced Jiunti to 70-months in prison – this term included time  
7 for the supervised release violation.

8 Oswaldo, on the other hand, was involved in the conspiracy for a long time, as was GOMEZ.  
9 Oswaldo was more of a leader however: whereas the people GOMEZ recruited worked for Oscar,  
10 Oswaldo's employees worked for Oswaldo. And Oswaldo participated in the money laundering  
11 scheme. GOMEZ did not, so far as the government is aware. Neither GOMEZ nor Oswaldo was  
12 charged with a firearms offense. The government agreed to a 65-month prison term for Oswaldo, which  
13 represents a modest increase to account for Oswaldo's increased culpability.

14 The comparison to Gonzalez is less direct: like GOMEZ, Gonzalez was involved in this  
15 conspiracy for a long time, but as a gardener. Unlike GOMEZ, Gonzalez possessed a firearm, which he  
16 admitted was to protect the grow house. And unlike GOMEZ, Gonzalez suffers from significant  
17 cognitive deficits as a result of a head injury he received years ago. Though Gonzalez's conduct, in  
18 itself, would warrant a more severe penalty, his personal characteristics warrant more lenity than  
19 GOMEZ's. On balance, it is fair to impose roughly equal sentences on both men. The government  
20 agreed to approximately 60 months for Gonzalez.

21 A 60-month sentence for GOMEZ is thus commensurate to the sentences that other similarly-  
22 situated defendants received, and accounts for the differences in their respective roles in the conspiracy.  
23 It also maintains adequate separation between GOMEZ's sentence and the sentences that those involved  
24 in the hard drug conspiracy have received or will receive: Oscar was the conspiracy's ringleader and  
25 received a 235-month sentence – roughly four times longer than GOMEZ's sentence; the government  
26 agreed to a 120-month sentence for David Vigil, roughly twice the sentence the government agreed to  
27 for GOMEZ. Imposing a 60-month sentence thus will not create any unwarranted sentencing disparities.

28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, the government recommends that the Court accept the parties' agreed  
3 resolution and sentence GOMEZ to 60 months imprisonment, followed by 4 years of supervised release  
4 on the terms Probation recommends.

5 DATED: June 11, 2018

Respectfully submitted,

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7  
8 /s/  
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